IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8598 OF 2005

U.P.Vishwakarma Coop.Housing
Society Ltd. .. Petitioner

Versus

Eknath Krishna Alekar & Ors. .. Respondents

Mr.S.P.Pawar for petitioner

Mr.G.N.Salunke and G.P.Narvekar for respondent Nos. 1 and 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 31st January 2006.

P.C.

. Heard Mr.Pawar for petitioner, Mr.Salunke

for respondent Nos. 1 and 2 and Mr.Palekar, AGP for respondent Nos. 3 and 4.

2. Rule. By consent, rule made returnable forthwith. Heard parties.

3. This petition challenges an order passed in revision application No.329 of 2004 by Divisional Joint Registrar, Cooperative Societies Maharashtra. This order is passed on 10th August 2005 and the orders impugned before Divisional Joint Registrar dated 8th December 2003, 19th January 2004 and 8th April 2004 are confirmed.

4. In my view, when the application was prefered by respondent Nos. 1 and 2 for membership and the contention is that the said application was not accepted and appeals were preferred invoking jurisdiction of the authorities under the Maharashtra Coop.Societies Act under section 22(2) and 23(2) thereof, it was

incumbent upon Divisional Joint Registrar to have scrutinised the legality and validity of the order passed by the Dy.Registrar, Coop.Societies. The Dy.Registrar in the order dated 8th December 2003, apart from proceeding ex parte against petitioner society, has observed that on merits also, application preferred by respondent Nos. 1 and 2 could not have been rejected. There are clear findings to that effect and it is held that the predecessor in title of respondent Nos. 1 and 2 was not disabled from transferring the said room. It is also observed that no objection of the society is not necessary in accordance with bye-laws. Similarly, the resolution of the General Body dated 11th October 1992 has been assailed and the Dy.Registrar has found substance in the contention that the same contravenes the principle of open membership.

5. Such far reaching conclusions and findings having been rendered, it was not

permissible for the Revisional Authority to have brushed aside the contentions, more particularly, those raised in writing and confirming the orders impugned before him. In my view, interest of justice would be served if the order passed by the Divisional Joint Registrar, which is cryptic in nature, is quashed and set aside. Accordingly, revision application is restored to file for being disposed of afresh on merits and in accordance with law, uninfluenced by any observations made earlier. All contentions of both sides on merits are expressly kept open.

6. Possession of respondent Nos. 1 and 2 in respect of the suit room not to be interfered with and it would be open for the society to collect dues pertaining to the said room without prejudice to their rights and contentions in the pending revision application. Revision application to be decided expeditiously.

(S.C.DHARMADHIKARI, J)